SUPREME COURT, U. S.

Supreme Court, U.S.
FILED

E. ROBERT SEAVER, CLERK

Supreme Court of the United States

October Term, 1970

No. 776

ROBERT R. BODICKER,
Petitioner

versus

ILLINOIS CENTRAL RAILROAD COMPANY,
Respondent

PETITION FOR REHEARING ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

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Petitioner prays that the court grant a rehearing on the Petitioner's Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi which Petition was denied by this court on January 18, 1971, and as grounds therefor would show that the senior justice of the court, Mr. Justice Black, with whom Mr. Justice Douglas and Mr. Justice Brennan joined, dissented with the majority and thought certiorari should be granted. The written dissent attached hereto as Appendix "A", expresses the concern that has been typical of the United States Supreme Court in protecting the constitutional and statutory rights of employees under the Federal Employers' Liability Act for which the court has so valiantly stood since the first case was presented to it under the Act.

Congress has just registered its continuing deep concern for the safety of railroad employees in the United States in the passage of the "Federal Railroad Safety Act of 1970", Public Law 91-458, 91st Congress §1933, 84 Statutes 971. This bill was passed on October 16, 1970 after Petitioner filed his Petition for a Writ of Certiorari. That Act authorizes the United States Government to correct unsafe working conditions on American railroads, conditions which the railroads failed to voluntarily correct through their many years of operation, and covers conditions which we believe caused Petitioner's serious injuries.

Without reflecting on the Supreme Court Judges of the State of Mississippi or the trial judge, their minds had been molded in accordance with the principles laid down in the common law, and they find it difficult to go beyond that. In the case of *Rogers v. Missouri Pacific Railroad Co.*, 352 U.S. 500, 77 S.Ct. 443, this court said:

> "The law was enacted because Congress was dissatisfied with the common law duty of the master to his servant. The statute supplants that duty with the far more drastic duty of paying damages for injury or death at work due in whole or in part to the employers negligence."

In the case of *Bailey v. Central Vermont Ry., Inc.*, 319 U.S. 350, 63 S.Ct. 1062, the court said:

> "The right to trial by jury is 'a basic and fundamental feature of our system of federal jurisprudence.' Jacob v. New York City, 315 U.S. 752, 62 S.Ct. 854, 86 L.Ed. 1166. It is part and parcel of the remedy afforded

> railroad workers under the Employers' Liability Act. * * * * * To deprive these workers of the benefit of a jury trial in close or doubtful cases is to take away a goodly portion of the relief which Congress has afforded them."

The burden of our original brief was to point out the laws that supported our contentions in this case. However, by the dissenting opinion of Justice Black, our attention has been called to the fact that the lower courts have not followed the injunction of the United States Supreme Court, and the employees of the railroads in the state of Mississippi are not receiving the protection of this Act.

Wherefore, the Petitioner prays for a rehearing on his Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi.

Respectfully submitted,

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APPENDIX

APPENDIX "A"

SUPREME COURT OF THE UNITED STATES

October Term, 1970

ROBERT R. RODICKER
v.
ILLINOIS CENTRAL RAILROAD COMPANY

On Petition for Writ of Certiorari to the Supreme Court of the State of Mississippi

No. 776. Decided January 18, 1971

The petition for writ of certiorari is denied.

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

This is a tragic case in which a twenty-three-year-old railroad worker was permanently and totally disabled while performing his duties. He has been denied his right to recover damages by what I believe was the gross error of the Mississippi Supreme Court in depriving him of his constitutional right to a jury trial.

Petitioner Robert Rodicker, a man with an eighth-grade education, has earned his living doing manual labor for respondent Illinois Central Railroad since the age of 18. On September 18, 1964, Rodicker was working a switch en-

gine with two other Illinois Central Railroad employees coupling an Illinois Central car to a train at the Union Passenger Terminal in New Orleans. As the engine backed up, it spewed out a shower of sparks, covering Rodicker with fire and burning his back and neck. He leaned away from the engine's steps to save himself from the sparks and smashed into a negligently placed steel garbage container that knocked him to the tracks unconscious. He brought suit against respondent under the Federal Employer's Liability Act, urging that his injury was negligently caused by the engine's excessive sparks and the dangerous placement of the steel garbage containers. The Mississippi Supreme Court affirmed a judgment directing a verdict for the railroad. That court held that as a matter of law petitioner was an employee of the Union Passenger Terminal and not the Illinois Central at the time of this terrible accident. I cannot understand the Court's refusal to grant certiorari.

Respondent had made an agreement with the Union Passenger Terminal whereby the latter used Illinois Central employees and those of other railroads as crews to switch the railroads' cars when they entered the terminal. Petitioner was working on such a crew when he was injured. He had an Illinois Central employee number and was being paid by check drawn on the Illinois Central. He regularly applied to the Illinois Central for vacation time and received vacation pay from it. And of course he was actually coupling an Illinois Central car at the time of the injury.

On this record petitioner was entitled to have a jury determine whether he should recover from the Illinois Central. See, *e.g.*, *Sinkler v. Missouri Pacific Railroad*, 356

U.S. 326 (1[illegible] *Wilkerson v. McCarthy*, 336 U.S. 53 (1949); *Terminal Railroad Association of St. Louis v. Fitzjohn*, 165 F.2d 473 (CA8 1948). Today the Court deprives petitioner of his right to a jury trial and frustrates the plan of Congress to provide a remedy for railroad employees injured by their employers' negligence.

I think it is of paramount importance that the purpose of Congress to protect people like petitioner should not be frustrated by the will of judges. I would grant certiorari and reverse the judgment of the court below.